Lembaga Kumpulan Wang Simpanan Pekerja v Ong Lian Chee (suing as administrator of the estate of Goh Tin Poh, deceased)

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02–889 OF 2006
LOW HOP BING, RAMLY ALI AND T SELVENTHIRANATHAN JJCA
11 MARCH 2010

Civil Procedure — Appeal — Appeal to Court of Appeal — Dependent's claim to EPF for additional amount under s 54(1)(a) read with s 58(1) and Fifth Schedule of the Employees Provident Fund Act 1991 — Whether additional amount payable to dependent based on date of member's death or date of approval by EPF Board — Whether additional amount payable under s 58(1) to dependent set out in Fifth Schedule (pre-amendment) or in Fifth Schedule (post amendment)

Limitation — Accrual of cause of action — Whether cause of action accrued from date of death of deceased member or from date when EPF Board refused to grant authority for withdrawal of additional amount — Whether defendant's claim time barred by s 6(1)(d) of the Limitation Act 1953

Provident Fund — Claims — Payment of additional amount — Claim by dependent of deceased member — Whether additional amount based on pre or post amendment to Fifth Schedule of the Employees Provident Fund Act 1991

The deceased was an EPF member who died on 12 October 1998. His wife as dependent applied for the withdrawal of all money standing to the credit of the deceased with the EPF Board. On 27 September 2001 and 9 July 2002, the EPF Board approved the dependent's application. The board also paid her the additional sum of RM2,000 pursuant to s 54(1)(a) read with s 58(1) and the Fifth Schedule to the Employees Provident Fund Act 1991 ('the EPF Act 1991'). Prior to 1 July 2000 (pre-amendment), the additional sum provided under the Fifth Schedule was RM30,000. From 1 July 2000 (post amendment), due to an amendment, this sum was reduced to RM2,000. The dependent filed an originating summons on 26 October 2005 for orders, inter alia, to declare the EPF Board's decision to pay the reduced sum of RM2,000 invalid and to compel the board to pay the additional sum of RM30,000 instead. The High Court ordered the payment of RM30,000 and thus the instant appeal by the EPF Board to the Court of Appeal. The

A Court of Appeal had to determine the following issues: (a) whether on a true construction of s 54(1)(a) read with s 58(1) and the Fifth Schedule, the additional amount payable to the dependent ought to be RM30,000 given that the deceased member died on 12 October 1998; and (b) whether the dependent's claim was barred by s 6(1)(d) of the Limitation Act 1953 on the B basis that her originating summons was filed on 26 October 2005, seven years after the death of the deceased.

Held, dismissing the appeal with costs:

C (1) The dependent's right to recover the additional amount arose when her husband — the deceased — died on 12 October 1998, as that was the date on which the dependent lost her support as dependent. Since the event which gave rise to the withdrawal of the deceased member's money was his death, the additional amount payable to the dependent D should be based on the date of the member's death, and not the subsequent date of approval by the EPF Board. On 12 October 1998, the additional amount set out in the Fifth Schedule was RM30,000. That was the (pre-amendment) law governing the matter and thus the additional amount payable to the dependant under the Fifth Schedule E should be the pre-amendment sum of RM30,000. The relevant amendment to the Fifth Schedule vide Act A1080 came into force only from 1 July 2000 ie, some 20 months after the death of the deceased member. That amendment had no retrospective effect and could not affect the deceased member who died on 12 October 1998 (see paras F 11–12).

(2) The cause of action would only accrue when the EPF Board refused to grant the authority for the withdrawal of the additional amount of RM30,000. The six year limitation period would not begin to run from the date of death of the deceased member, but from the date when the G EPF Board rejected the dependent's claim for RM30,000 and merely approved the payment of RM2,000 as the additional amount on 27 September 2001 and 9 July 2002. In the instant appeal, the dependent had filed the originating summons on 26 October 2005 which was well within the time bar (see paras 22–23).

H **[Bahasa Malaysia summary**

Si mati merupakan ahli KWSP yang meninggal dunia pada 12 Oktober 1998. Isterinya, sebagai tanggungan, memohon untuk mengeluarkan wang yang ada pada kredit si mati. Pada 27 September 2001 dan 9 Julai 2002, I Lembaga KWSP membenarkan permohonannya. Lembaga KWSP juga membayar jumlah tambahan sebanyak RM2,000 berikutan s 54(1)(a) yang dibaca bersama s 58(1) Jadual Kelima Akta Kumpulan Simpanan Wang Pekerja 1991 ('Akta KWSP 1991'). Sebelum 1 Julai 2000 (sebelum pindaan), jumlah tambahan yang diperuntukkan di bawah Jadual Kelima adalah

RM30,000. Bermula 1 Julai 2000 (selepas pindaan) berikutan satu pindaan, jumlah ini dikurangkan kepada RM2,000. Tanggungan memfailkan satu saman pemula pada 26 Oktober 2005 bagi perintah, antara lain, untuk mengisytiharkan keputusan Lembaga KWSP untuk membayar jumlah dikurangkan sebanyak RM2,000 adalah tidak sah dan untuk memaksa Lembaga KWSP membayar jumlah tambahan sebanyak RM30,000. Mahkamah Tinggi memerintahkan pembayaran RM30,000 dan ini adalah rayuan oleh Lembaga KWSP ke Mahkamah Rayuan. Mahkamah Rayuan perlu memutuskan isu-isu berikut: (a) sama ada pentafsiran s 54(1)(a) dibaca bersama s 58(1) dan Jadual Kelima, jumlah tambahan yang perlu dibayar kepada tanggungan adalah RM30,000 memandangkan si mati meninggal dunia pada 12 Oktober 1998; dan (b) sama ada tuntutan tanggungan adalah dihadkan oleh s 6(1) Akta Had Masa 1953 atas dasar bahawa saman pemula difailkan pada 26 Oktober 2005, tujuh tahun selepas kematian si mati.

Diputuskan, menolak rayuan dengan kos:

(1) Hak tanggungan untuk menuntut balik jumlah tambahan berbangkit apabila suaminya, si mati, meninggal dunia pada 12 Oktober 1998, kerana itulah tarikh tanggungan kehilangan sumber saraannya. Memandangkan kejadian yang memberi hak untuk mengeluarkan wang si mati adalah kematiannya, jumlah tambahan yang perlu dibayar kepada tanggungan seharusnya berdasarkan tarikh kematian ahli dan bukan selepas tarikh yang diluluskan oleh Lembaga KWSP. Pada 12 Oktober 1988, jumlah tambahan yang diperuntukkan dalam Jadual Kelima adalah RM30,000. Ini adalah (sebelum pindaan) undang-undang yang mentadbir hal ini dan oleh itu, jumlah tambahan yang perlu dibayar kepada tanggungan di bawah Jadual Kelima haruslah jumlah sebelum pindaan iaitu RM30,000. Pindaan berkenaan Jadual Kelima berkuat kuasa pada 1 Julai 2000, iaitu 20 bulan selepas kematian ahli yang meninggal dunia. Pindaan tersebut tiada kesan retrospektif dan tidak boleh memberi kesan kepada ahli yang meninggal dunia pada 12 Oktober 1998 (lihat perenggan 11–12).

(2) Kausa tindakan hanya terakru apabila Lembaga KWSP enggan memberi kuasa untuk mengeluarkan jumlah tambahan sebanyak RM30,000. Had masa selama enam tahun tidak bermula dari tarikh kematian ahli yang meninggal dunia tetapi sebaliknya bermula pada tarikh Lembaga KWSP menolak tuntutan tanggungan sebanyak RM30,000 dan hanya meluluskan pembayaran sebanyak RM2,000 sebagai jumlah tambahan pada 27 September 2001 dan 9 Julai 2002. Dalam rayuan ini, tanggungan memfailkan saman pemula pada 26 Oktober 2005 yang masih lagi dalam had masa (lihat perenggan 22–23).]

Notes

For a case on claims in general, see 10 *Mallal's Digest* (4th Ed, 2008 Reissue) para 1661.

For cases on accrual of cause of action in general, see 9 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 2152–2166.

For cases on appeal to Court of Appeal, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 742–748.

Cases referred to

Credit Corporation (M) Bhd v Fong Tak Sin [1991] 1 MLJ 409, SC (refd)

Golden Hope Plantations (Peninsular) Sdn Bhd (Ladang Sungei Senarut) v Saraswathy a/p Kathan [2009] 1 MLJ 611; [2008] 6 AMR 297, CA (refd)

Letang v Cooper [1964] 2 All ER 929, CA (refd)

Lim Kean v Choo Koon [1970] 1 MLJ 158, HC (refd)

Lim Kim Swee v Tan Meng San [1960] MLJ 262, CA (refd)

Nasri v Mesah [1971] 1 MLJ 32, FC (refd)

Newacres Sdn Bhd v Sri Alam Sdn Bhd [1991] 3 MLJ 474, SC (refd)

Saw Gaik Beow v Cheong Yew Weng & Ors [1989] 3 MLJ 301, HC (refd)

Sio Koon Lin & Anoor v SB Mehra [1981] 1 MLJ 225, FC (refd)

Taib bin Awang v Mohamad bin Abdullah & Ors [1983] 2 MLJ 413, HC (refd)

Legislation referred to

Employees Provident Fund Act 1991 ss 54(1)(a), 58(1), Fifth Schedule

Interpretation Acts 1948 and 1967 s 17A

Limitation Act 1953 s 6(1)(d)

Appeal from: Originating Summons No S7–21–258 of 2005 (High Court, Kuala Lumpur)

Mubashir Mansor (Skrine) for the appellant.

K Sugunan (Gomez & Associates) for the respondent.

Low Hop Bing JCA (delivering judgment of the court):

APPEAL

[1] The Employees Provident Fund Board ('the EPF Board') has appealed against the decision of the learned High Court judge in ordering the EPF Board to pay one Ong Lian Chee, the EPF member's wife ('the dependent'), a sum of RM30,000, being the additional amount claimed by the dependent under s 54(1)(a) read with s 58(1) and the Fifth Schedule to the Employees Provident Fund Act 1991 ('the EPF Act 1991') (a reference hereinafter to a schedule and a section is a reference to that schedule and section respectively

in the EPF Act 1991).

UNDISPUTED FACTS

[2] One Goh Tin Poh ('the deceased') was an EPF member. He died on 12 October 1998. Subsequently, letters of administration had been granted to the deceased's estate. His wife, the dependent, sued as the administratrix of the deceased's estate.

[3] In August 2001, the dependent applied under s 54(1)(a) for the withdrawal of all sums of money standing to the credit of the deceased with the EPF Board.

[4] The EPF Board approved the application for the withdrawal of the sums of money standing to the credit of the deceased on 27 September 2001 and 9 July 2002. In invoking s 54(1)(a), read with s 58(1) and the Fifth Schedule (post amendment), the EPF Board paid a sum of RM2,000, instead of the RM30,000 claimed by the dependent.

[5] Pursuant to the dependent's originating summons filed in the High Court, the dependent obtained an order for the payment of the RM30,000. Hence this appeal by the EPF Board.

ADDITIONAL AMOUNT

[6] Mr Mubashir Mansor, of counsel for the EPF Board, states that the law that determines the additional amount payable is to be found in s 58(1) read with the Fifth Schedule (post amendment) which was in force when the EPF Board granted the approval under s 54(1)(a).

[7] Learned counsel Mr K Sugunan contended for the dependent that, based on the deceased's date of death (12 October 1998), the additional amount payable under s 58(1) to the dependent should be RM30,000 set out in the Fifth Schedule (pre-amendment) which was in force at the time of the deceased's death.

[8] On the basis of the above submissions, we formulated the question for determination as follows:

> Given the date of the deceased member's death on 12 October 1998, and upon the true construction of s 54(1)(a) read with s 58(1) and the Fifth Schedule, should the additional amount payable to the dependant be RM30,000?

[9] The relevant statutory provisions contained in ss 54(1)(a) and 58(1) merit reproduction as follows:

> 54 Withdrawals from the Fund
>
> (1) The Board may authorize the withdrawal of all sums of money standing to the credit of the member of the Fund upon any terms and conditions as may be prescribed by the Board, if the Board is satisfied that —
>
> (a) the member of the Fund has died (Act A1080).
>
> 58 Payment of additional amount
>
> (1) Where authority for withdrawal under section 54(1)(a) has been granted, an additional amount as set out in the Fifth Schedule shall be payable:
>
> Provided that … (not relevant). (Act A1080).

[10] Upon a careful reading, we find that ss 54(1)(a), 58(1) and the Fifth Schedule are silent on whether the payment of the additional amount is to be based on the law applicable on the date when the member died or on the date of the EPF Board's approval.

[11] However, s 54(1)(a) does make specific reference to the EPF Board's power to authorise withdrawal 'if the EPF Board is satisfied that: (a) the member of the fund has died'. In our view, the dependent's right to recover the additional amount arose when her husband, Goh Tin Poh (the deceased), died on 12 October 1998, as that was the date on which the dependent lost the support as such dependent. Since the event which gave rise to the withdrawal of the deceased member's money is the death of the member, the additional amount payable to the dependent should be based on the date of the member's death, and not the subsequent date of approval by the EPF Board.

[12] On 12 October 1998, the additional amount set out in the Fifth Schedule was RM30,000. That was the (pre-amendment) law governing the matter before us and so the additional amount payable to the dependent under the Fifth Schedule should be the pre-amendment sum of RM30,000. The relevant amendment to the Fifth Schedule vide Act A1080 came into force only from 1 July 2000 ie some 20 months after the death of the deceased member. That amendment has reduced the additional amount from RM30,000 to RM2,000. The reduction from RM30,000 to RM2,000 effective on and after 1 July 2000, has no retrospective effect and could not affect the deceased member who died on 12 October 1998.

[13] Our view is consistent with the framework of the EPF Act 1991 which is a piece of social legislation wherein the underlying purpose or object is no doubt the promotion of the welfare of the members. In the context of beneficent social legislation, the provisions therein must receive a broad, liberal and functional or purposive interpretation: see *Golden Hope Plantations (Peninsular) Sdn Bhd (Ladang Sungei Senarut) v Saraswathy a/p Kathan* [2009] 1 MLJ 611 at p 618; [2008] 6 AMR 297 at p 303 (CA). Further, s 17A of the Interpretation Acts 1948 and 1967 requires the adoption of a purposive approach to the construction of statutes and reads as follows:

> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote the purpose or object.

[14] Hence, we answer the above question in the affirmative.

LIMITATION ACT 1953

[15] The EPF Board raised an alternative argument that even if the date of the deceased's death, 12 October 1998, is pertinent in determining the additional amount, the dependent's claim is barred by s 6(1)(d) of the Limitation Act 1953 ('s 6(1)(d)') on the ground that the originating summons was filed on 26 October 2005, seven years after the deceased's death.

[16] The dependent's response is that time only began to run from 27 September 2001 and 9 July 2002 when the EPF Board approved the additional amount of merely RM2,000 instead of the sum of RM30,000 sought by the dependent.

[17] The question raised herein is whether, on the facts, the dependent's originating summons is statute barred.

[18] Section 6(1)(d) provides for the limitation of actions to recover any sum recoverable, eg by virtue of any written law, in the following words:

> 6
>
> (1) Save as hereinafter provided the following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say —
>
> (a) ...;

A (b) ...;

(c) ...; and

(d) actions to recover any sum recoverable by virtue of any written law …

B **[19]** For the purpose of determining the issue of limitation under s 6(1)(d), it is essential to identify the defendant's cause of action; the date of accrual thereof; and the expiration of the six year limitation period.

C **[20]** It is apposite to define the phrase 'cause of action'. It means 'simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person': per Diplock LJ in *Letang v Cooper* [1964] 2 All ER 929 at p 934. See also *Lim Kean v Choo Koon* [1970] 1 MLJ 158, *Nasri v Mesah* [1971] 1 MLJ 32 (FC), *Saw Gaik Beow v Cheong Yew Weng & Ors* [1989] 3 MLJ 301, *Newacres Sdn Bhd v Sri Alam Sdn Bhd* [1991] D 3 MLJ 474 (SC), and *Credit Corporation (M) Bhd v Fong Tak Sin* [1991] 1 MLJ 409 (SC), as found in *Malaysian Court Practice 2007* Desk Ed LexisNexis at p 144.

E **[21]** The dependent's *cause of action* relates to the recovery of the additional amount of RM30,000 arising from the death of the deceased member. It revolves around the exercise of the dependent's right to recover the RM30,000 by virtue of the written law contained in ss 54(1)(a), 58(1) and the Fifth Schedule.

F

[22] *The cause of action would only accrue* when the EPF Board refused to grant the authority for the withdrawal of the additional amount of RM30,000 claimed by the dependent, and had instead approved the mere sum of RM2,000 on 27 September 2001 and 9 July 2002. The death per se G of the deceased member on 12 October 1998 was not the factual situation which could have entitled the dependent to obtain a remedy against the EPF Board. In other words, the death per se could not have given rise to a cause of action in favour of the dependent at that stage. As at 12 October 1998, it was premature for the dependent to commence the originating summons H against the EPF Board. At best, it was an incomplete cause of action, and the filing of an originating summons based on a premature cause of action is bound to be dismissed in limine: *Taib bin Awang v Mohamad bin Abdullah & Ors* [1983] 2 MLJ 413, *Sio Koon Lin & Anor v SB Mehra* [1981] 1 MLJ 225, and *Lim Kim Swee v Tan Meng San* [1960] MLJ 262, as found in I *Malaysian Court Practice* Desk Ed LexisNexis at p 144.

[23] *The six year limitation period* would not begin to run from the date of death of the deceased member, but from the date when the EPF Board rejected the dependent's claim for RM30,000, and merely approved the

payment of RM2,000 as the additional amount on 27 September 2001 and 9 July 2002. Even by taking into account the earlier date of 27 September 2001, the six year limitation period prescribed in s 6(1)(d) would only lapse on 27 September 2007. In the instant appeal, the dependent had in fact filed the originating summons on 26 October 2005. That was well within the time bar. In the circumstances, we had no difficulty in dismissing the EPF Board's contention as being devoid of merits.

CONCLUSION

[24] On the foregoing grounds, we concluded that the learned High Court judge was correct in arriving at the above decision which we affirmed. This appeal was dismissed with costs of RM7,500 to the dependent. Deposit to the dependent on account of the fixed costs.

Appeal dismissed with costs.

Reported by Andrew Christopher Simon